



In the Matter of:

SYED M. A. HASAN,

ARB CASE NO. 03-078

COMPLAINANT,

ALJ CASE NO. 2002-ERA-32

v.

DATE: August 24, 2004

SARGENT & LUNDY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Syed M. A. Hasan, pro se, *Madison, Alabama*

For the Respondent:

Harry Sangerman, Esq., *Sangerman & Gilfillan, Chicago, Illinois*

FINAL DECISION AND ORDER OF DISMISSAL

This case arises under the whistleblower protection provision of the Energy Reorganization Act (ERA), 42 U.S.C.A. § 5851(b) (West 2004). The Complainant, Syed M. A. Hasan, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Sargent & Lundy, refused to hire him in retaliation for raising safety concerns. OSHA investigated Hasan's complaint and rejected it. Hasan then requested a formal hearing before an Administrative Law Judge (ALJ). This case was assigned to ALJ Joseph Kane, and was designated, Case No. 2002-ERA-32 (*Hasan II*).¹

On August 26, 2002, the Respondent moved to dismiss *Hasan II*, or in the alternative, to hold the case in abeyance until the resolution of *Hasan I*. Judge. Kane granted the Respondent's motion and placed *Hasan II* in abeyance until resolution of *Hasan I* "to facilitate an easier timetable for the parties and to potentially avoid

¹ An earlier case between the same parties, *Hasan v. Sargent & Lundy*, ALJ No. 2000-ERA-7 (*Hasan I*) was assigned to ALJ Robert Lesnick.

duplicative litigation.” *Hasan v. Sargent & Lundy*, ALJ No. 2002-ERA-0032, slip op. at 1 (Jan. 8, 2003).²

On December 5, 2002, Judge Lesnick issued a Recommended Decision and Order (R. D. & O.) dismissing *Hasan*. Hasan appealed the dismissal to the Administrative Review Board. He then requested that Kane establish discovery guidelines and schedule a formal hearing in *Hasan II*. The Respondent renewed its motion to dismiss *Hasan II*. Judge Kane issued a second Order Holding the Case in Abeyance “until a final decision and order is issued by the Secretary of Labor [in *Hasan I*].” *Hasan v. Sargent & Lundy*, No. 2002-ERA-32, slip op. at 2 Jan. 8, 2003).³

In response to ALJ Kane’s Order Holding the Case in Abeyance, Hasan filed an “Emergency Motion” requesting the Board to vacate this Order. Sargent & Lundy filed a response to the Emergency Motion, opposing the motion and requesting the Board to strike the motion, and Hasan filed a reply to Sargent & Lundy’s response.

On March 28, 2003, the Board issued an Order Holding Motion to Strike Complainant’s Motion in Abeyance and to Show Cause. *Hasan v. Sargent & Lundy*, ARB No. 03-078, ALJ No. 02-ERA-32 (Mar. 28, 2003). The Board noted that Hasan’s appeal appeared to be interlocutory in nature because the ALJ’s January 8, 2003 order (in *Hasan I*) did not resolve the merits of Hasan’s case. The Board ordered Hasan to show cause why it should not dismiss his Emergency Motion as an impermissible interlocutory appeal. Hasan filed a response to the Board’s order and Sargent & Lundy replied to Hasan’s response.

On July 30, 2004, the Board affirmed ALJ Lesnick’s R. D. & O in *Hasan I*. *Hasan v. Sargent & Lundy*, ARB No. 03-030, ALJ No. 2000-ERA-7. Because the Board has now issued the Secretary’s final decision⁴ in *Hasan I* and upon notification by the parties, Judge Kane will continue with his adjudication of *Hasan II*, this interlocutory appeal is moot. Therefore, ARB No.03-078 is **DISMISSED**.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

² Both cases presented the issue whether Sargent & Lundy’s imposition of a lifetime ban on hiring Hasan violated the ERA’s whistleblower protection provision.

³ ALJ Kane further ordered the parties to “place the Court on notice once a final decision and order is issued” and indicated that at that time he would “address the motions of both parties.” Slip op. at 2.

⁴ The Secretary of Labor has delegated her authority to issue final decisions under the ERA to the ARB. Secretary’s Order 1-2002, 67 Fed Reg. 64272(4)(c)(7) (Oct. 17, 2002).